

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BEENA BEAUTY HOLDING, INC. d/b/a  
PLANET BEAUTY

and

Case 31-CA-144492

MICHAEL SANCHEZ

NOTICE TO SHOW CAUSE

On May 23, 2016, the Board issued a Decision and Order finding that the Respondent violated Section 8(a)(1) of the Act by: (1) maintaining and enforcing an arbitration/dispute resolution provision in its commission agreement-sales (“agreement”) that required employees, as a condition of employment, to waive their right to file class or collective actions in all forums; and (2) maintaining the agreement which interfered with employees’ ability to access the Board. 364 NLRB No. 3 (2016). On June 29, 2018, the United States Court of Appeals for the Ninth Circuit denied enforcement, in light of *Epic Systems Corp. v. Lewis*, 585 U.S. \_\_\_, 138 S. Ct. 1612 (2018), of the Board’s first finding, and remanded the second finding back to the Board.

At the time of the Board’s decision, and Administrative Law Judge Mary Miller Cracraft’s March 3, 2016 decision that the Board affirmed in relevant part, the issue whether maintenance of a policy that did not expressly restrict employee access to the Board violated Section 8(a)(1) on the basis that employees would reasonably believe it did would be resolved based on the prong of the analytical framework set forth in *Lutheran Heritage Village-Livonia*, 343 NLRB 646 (2004), that held an employer’s maintenance of a facially neutral work rule would be unlawful “if employees would reasonably construe the language to prohibit Section 7 activity.” *Id.* at 647. Recently, the Board overruled the *Lutheran Heritage* “reasonably

construe” test and announced a new standard that applies retroactively to all pending cases. *The Boeing Co.*, 365 NLRB No. 154, slip op. at 14-17 (2017).

Accordingly, the Board hereby issues the following notice to show cause why this case should not be remanded to a judge for further proceedings in light of *Boeing*, including, if necessary, the filing of statements, reopening the record, and issuance of a supplemental decision.

**NOTICE IS GIVEN** that any party seeking to show cause why this case should not be remanded to an administrative law judge must do so in writing, filed with the Board in Washington, D.C., on or before November 13, 2018 (with affidavit of service on the parties to this proceeding). Any briefs or statements in support of the motion shall be filed on the same date.

Dated, Washington, D.C., October 29, 2018

By direction of the Board:

/s/ Farah Z. Qureshi

Associate Executive Secretary